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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,518	07/18/2003	Margaret F. Hudson	10704-8 MIS:jb	1166
24223	7590	05/16/2005	EXAMINER	
SIM & MCBURNEY 330 UNIVERSITY AVENUE 6TH FLOOR TORONTO, ON M5G 1R7 CANADA				WEIER, ANTHONY J
ART UNIT		PAPER NUMBER		
		1761		
DATE MAILED: 05/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/621,518	Applicant(s)	HUDSON ET AL.
Examiner	Anthony Weier	Art Unit	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 04 February 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-19 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 5, 7, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Rapp et al.

The claims are rejected for the reasons set forth in the last Office Action (mailed 10/5/04).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 4, 6, 8, 9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp et al.

The claims are rejected for the reasons set forth in the last Office Action (mailed 10/5/04).

5. Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp et al taken together with Heick et al.

The claims are rejected for the reasons set forth in the last Office Action (mailed 10/5/04).

6. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp et al taken together with either one of EP 11552627 or WO 02/080703.

The claims are rejected for the reasons set forth in the last Office Action (mailed 10/5/04).

### ***Response to Arguments***

Applicant's arguments filed 2/4/05 have been fully considered but they are not persuasive.

Applicant argues that Rapp et al does not teach scrambled eggs but an egg product that has the appearance of scrambled eggs. However, although the method by which the instant product is achieved may differ, the final product contains a material that has the appearance of scrambled eggs and, therefore, contains eggs which are essentially scrambled eggs as called for in the final product.

Applicant further argues that Heick et al teaches a product which is different from that of the instant invention. It should be noted, however, that Heick et al was applied in combination with Rapp et al, wherein Rapp et al is relied for disclosing most of the invention. Heick et al was relied on for teaching the addition of certain ingredients in scrambled egg or scrambled egg products, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have included same as well known ingredient as a matter of preference

depending on, for example, taste desired, and, furthermore, with respect to citric acid, as a preserving agent.

Applicants argue that EP 1,155,627 and WO 02/080703 do not teach added omega-3 fatty acid as required in claim 19. However, claim 19 is a product claim and even though the process for achieving same may differ from that contemplated by the combination of references presented, the final product would be the same – that is, an egg product containing increased omega-3 fatty acid.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

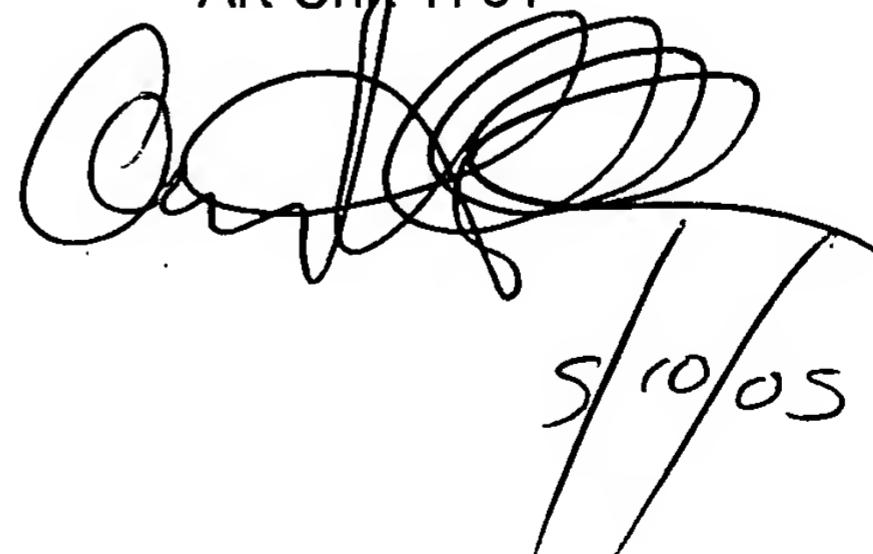
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier  
Primary Examiner  
Art Unit 1761

Anthony Weier  
May 10, 2005

A handwritten signature in black ink, appearing to read "Anthony Weier", is written over a large, stylized, illegible scribble. Below the scribble, the date "May 10, 2005" is handwritten vertically.